IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8662 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.P.DHOLAKIA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHIVLAL SHERARAM VISHNOI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8662 of 2004

MS KRISHNA U MISHRA for Petitioner No. 1

MR RC KODEKAR, AGP for Respondents No. 1-3

CORAM : HON'BLE MR.JUSTICE R.P.DHOLAKIA

Date of decision: 05/11/2004

ORAL JUDGEMENT

1. The present petition has been filed by the petitioner who has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985

(hereinafter referred to as `the Act of 1985') by order dated 30.04.2004 passed by the District Magistrate, Banaskantha, Palanpur.

2. It is now well settled that unless the activities of a person as bootlegger has disturbed the maintenance of public order, he cannot be detained under the Act. Reliance is placed on a decision in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad & Ors. reported in AIR 1989 SC 491.

3. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, the detaining authority has passed the detention order relying upon the sole criminal case registered before the Tharad Police Station vide Prohibition C.R. No.5070 of 2004 for the offence punishable under Sections 66-B, 65-AE 81 and 116(2) Prohibition Act dated 24.04.2004 and no statements of witnesses have been recorded by the detaining authority. Drawing my attention is towards page No.20 (Annexure-B) to the petition the learned advocate for the petitioner has further submitted that on the date of passing detention order, the petitioner was in police custody, and this aspect would have been considered by the detaining authority while passing the detention order. In this connection, she has drawn my attention towards the case of Amritlal and Others Vs. Union Govt. Through Secy., Ministry of Finance and Others, 2001 SCC (Cri) 147 wherein it was held at Head note as under:

> "Preventive Detention--Detention order-Subjective satisfaction--Detenu already in jail-Detaining authority must be satisfied on the basis of available cogent material about likelihood of the detenu being released on bail and not merely about likelihood of his moving application for bail--In absence of such satisfaction detention order cannot be sustained--Prevention of Illicit Traffic in Narcotic drugs and Psychotropic Substances act, 1988, S.3(1)"

4. It appears that on the date of passing the detention order, the detenu was in police custody, hence in view of the above judgement rendered in the case of Amrutlal (Supra), the detention order is illegal and cannot be sustained and the same is required to be quashed and set aside.

5. The petition is allowed. The impugned order of

detention dated 30.04.2004 passed against the detenu Shivlal Sheraram Vishnoi is hereby quashed and set aside. The detenu is hereby ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(R.P.DHOLAKIA,J.)

(vijay)